IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 27 of 2007
With
COMPANY PETITION No. 28 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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POPNET INFOTECH INDIA PVT.LTD. - Petitioner(s)
Versus
. . - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 27/08/2007

ORAL JUDGMENT

1. The present petitions are for sanctioning the Scheme of Amalgamation, copy whereof is produced at Annexure-C to the

petitions. The petitioner of Company Petition No.27 of 2007 is the Transferor Company, whereas the petitioner of Company Petition No.28 of 2007 is the Transferee Company.

2. In Company Petition No.27/2007, vide order dated 8.1.2007 passed by this Court (Coram: M.R.Shah,J.) in Company Application No. 2 of 2007, the meeting of the equity shareholders and unsecured creditors were dispensed with and it was also recorded that there is no secured creditors of the company.

3. In Company Petition No.28/2007, vide order dated 8.1.2007 passed by this Court (Coram: M.R.Shah,J.) in Company Application No.3 of 2007, the meeting of the equity shareholders and all unsecured creditors were dispensed with and it was also recorded that there is no secured creditors of the company.

4. Both these petitions came to be admitted on 5.2.2007 and it was ordered to advertise in two daily newspapers, viz. 'Indian Express' (English daily) and 'Gujarat Samachar' (Gujarati daily), both Vadodara edition and the publication in the Government gazette in both the petitions were dispensed with. The notice was ordered to be issued to the Central Government through Regional Director, Department of Company Affairs, Mumbai, and in case of Transferor Company, the notice was also issued to the Official Liquidator for examination through Chartered Accountant into the affairs of the Company.

5. The affidavit has been filed by Mr.Dharmendra M. Rathod,

the Clerk of the learned advocate Mrs.Swati Soparkar together with the copy of the paper publication pursuant to the order passed by this Court. As per the affidavit filed by Mr.Nehal Maniar, the Director of the petitioner transferor company, no objection is received by the petitioner or their learned advocate in response to the advertisement opposing the Scheme of Amalgamation or otherwise.

6. The Official Liquidator has filed the report dated 11.7.2007 with the report of M/s. K.A.Shah & Co., Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

7. In response to the notice issued to the Central Government, Mr.P.L.Malik, Assistant Registrar of Companies has filed the affidavit raising objection based on the communication received by the Registrar of Companies vide letter dated 27.3.2007 from the Regional Director, Company Affairs.

8. The objection appears to be that as there is clause for addition of the authorized capital of the transferor company into the authorized capital of the transferee company, the transferee company may be directed to comply with the provisions of Section 94/97 of the Companies Act.

9. In response thereto, Mr.Nehal Maniar, has filed additional affidavit dated 30.7.2007 stating at Para.2, inter alia, as under :

> "However, the petitioner company, at this stage, hereby undertakes to give up the said clause 9.1 of the scheme whereby the Memorandum of Association of the transferee company is proposed to be amended with regard to its capital clause. It had been proposed that the authorized capital of the transferor company be added to the authorized capital of the transferee company without further act or deed, the same is now proposed to be withdrawn."

10. Under these circumstances, the said objection would not survive and the consequence would be that clause for addition of the authorized capital of the transferor company into the transferee company shall stand deleted.

11. No other adverse circumstance are brought to the notice of this Court.

12. Hence, subject to the deletion of clause for addition of the authorized capital of the transferor company into the transferee company, the scheme of amalgamation is sanctioned as per the provisions of the Companies Act.

13. Petitions are allowed to the aforesaid extent.

14. The fees of the learned Assistant Solicitor General is quantified at Rs.3,500/- for each petition. It will be open to the concerned Company to pay the fees to the learned counsel by A/c. Payee cheque.

(Jayant Patel, J.)

(vipul)